PEMUNGUT DUTI HARTA PESAKA

v.

MUTHUKAMARU @ MUTHUKUMARU VEERIAH

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
SITI NORMA YAAKOB JCA
MOKTHAR SIDIN JCA
[CIVIL APPEAL NO: W-01-148-1995]
21 NOVEMBER 1996

SUCCESSION: *Administration - Estate duty - Objection to assessment by accountable person - Security for hearing of objection - Non-payment - Whether objection premature - Estate Duty Enactment 1941 s. 43(1), Supreme Court (Estate Duty) Rules 1954, rr. 2, 6, 9*

SUCCESSION: *Administration - Estate duty - Objection to assessment - Mode of commencement - Application proceeded by originating motion - Whether wrong procedure - Whether should have begun by petition - Whether fatal when hearing of application still pending - Estate Duty Enactment 1941 s. 43(1), Supreme Court (Estate Duty) Rules 1954 rr. 6, 9*

The respondent is the administrator of the estate of Veeriah s/o Savu, deceased, and was the accountable person in respect of the estate. The respondent was aggrieved by the assessment of estate duty made by the Collector of Estate Duty ('the Collector'), and in the event filed a notice of motion in the High Court under s. 43(1) Estate Duty Enactment, 1941 ('the Enactment'), objecting against the assessment and praying for a review thereof. It was not in dispute that under the said s. 43(1) the respondent was obliged to provide security for the hearing of his application. The respondent, however, had not provided such security, and this resulted in the Collector filing a notice of preliminary objection notifying the respondent that a preliminary objection would be raised at the hearing of the application to the effect, firstly, that the procedure adopted was by the respondent was wrong as the respondent should have been proceeded by way of petition under rr. 6 & 9 of the Supreme Court (Estate Duty) Rules 1954, and secondly, that the application was premature as the precondition in s. 43(1) of the Enactment had not been met.

Responding to the notice, the respondent filed a summon in chambers wherefore he applied for leave to deposit into Court the prerequisite security. On 25 July 1995, the learned Judge granted leave and consequently dismissed the Collector's preliminary objections. It was the learned Judge's finding that the 1954 Rules were not applicable as the titles of the Rules and r. 6 therein refer

to "Supreme Court" and all proceedings in the Supreme Court. In this appeal the Collector *inter alia* argued that the respondent's failure to provide security prior to the filing of the application to object was fatal to the respondent's case bearing in mind the proper import of s. 43(1) of the Enactment.

Held:

Per Siti Norma Yaakob JCA:

[1] As the merits of the case had yet to be argued or heard, the subsequent conduct of obtaining the order for security does not nullify the application, and nor does it bar the respondent from proceeding further with his application. It would have been otherwise had the application been heard and determined.

[2] Section 43(1) of the Enactment stipulates that an appeal against the Collector's assessment can be challenged "in the manner and on the conditions directed by rules of Court." The only known rules of Court relating to estate duty is the 1954 Rules made by the Supreme Court Rules Committee in exercise of its powers under s. 4 of the Rules Committee Ordinance 1948. What happened was that the Rules Committee in its wisdom gave prominence to the 1954 Rules by referring to them as the Supreme Court (Estate Duty) Rules, 1954 in line with the nomenclature of Courts then existing in 1954.

[3] Usage of the word "Supreme Court" in the 1954 Rules should not narrow the application of the 1954 Rules to matters brought before the Supreme Court only. On the contrary, the 1954 Rules in the words of the second proviso to s. 34(1) of the Enactment must be deemed to be in force with such modifications as may be necessary for the purpose of prescribing the procedure existing in respect of any provision of the Enactment. To that end, the 1954 Rules are aplicable to the facts of this case, and the learned Judge had therefore erred in his ruling on this point.

[4] The fact that the respondent proceeded by way of an originating motion and not by way of a petition does not disentitle him to be heard on his application. This must be so as what is in issue is only the format and not the substance. Whilst it is true that rightly, proceedings should commence by way of a petition, the fact that it did not does not prejudice the Collector in any way. It does not alter the fact that the substance of the application is an objection to the Collector's assessment, the very same complaint that would appear had proceedings commenced by way of a petition. In the circumstances herein, commencing the proceedings in the wrong format is not fatal to the respondent's case.

[Appeal dismissed.]

PEWARISAN: *Pentadbiran - Duti harta pusaka - Bantahan kepada taksiran oleh orang yang bertanggungjawab - Jaminan untuk pendengaran bantahan - Kegagalan membayar - Samada bantahan pra-masa - Enakmen Duti Harta Pusaka 1941 s. 43(1) - Kaedah-kaedah Mahkamah Agung (Duti Harta Pusaka) 1954 kk. 2, 6, 9*

PEWARISAN: *Pentadbiran - Duti harta pusaka - Bantahan kepada taksiran - Cara memulakan tindakan - Permohonan dibuat melalui saman pemula - Samada prosedur yang salah - Samada harus dimulakan dengan cara petisyen - Samada memudaratkan bilamana pendengaran permohonan masih dalam penantian - Enakmen Duti Harta Pusaka 1941 s. 43 (1), Kaedah-kaedah Mahkamah Agung (Duti Harta Pusaka) Kaedah-kaedah 1954 kk. 6, 9*

Responden adalah pentadbir harta pusaka Veeriah s/o Savu, si mati, dan adalah orang yang bertanggungjawab berhubung dengan harta pusaka tersebut. Responden terkilan dengan taksiran harta pusaka yang telah dibuat oleh Pemungut Duti Harta Pusaka (Pemungut), dan berhubung dengan perkara itu telah memfailkan satu notis usul dalam Mahkamah Tinggi di bawah s. 43(1) Enakmen Duti Harta Pusaka 1941 (Enakmen), membantah terhadap taksiran tersebut dan memohon untuk mendapatkan satu kajian semula terhadapnya. Tidak dipertikaikan bahawa di bawah s. 43(1) tersebut responden diwajipkan untuk memberi jaminan bagi perbicaraan permohonannya. Responden bagaimanapun gagal mengadakan jaminan sedemikian, dan ini menyebabkan Pemungut memfailkan Notis Bantahan Awal memaklumkan kepada responden bahawa satu bantahan awal akan dibangkitkan di perbicaraan permohonan tersebut, dimana beliau akan berhujah, pertamanya, bahawa prosedur yang diterima-pakai oleh responden adalah salah kerana responden seharusnya memulakan tindakan melalui petisyen di bawah kk. 6 dan 9 Kaedah-kaedah Mahkamah Agung (Duti Harta Pusaka) 1954, dan keduanya, bahawa permohonan tersebut adalah pra-masa kerana syarat awal dalam s. 43(1) Enakmen masih belum dipenuhi.

Menjawab Notis di atas, responden telah memfailkan satu saman dalam kamar di mana beliau telah memohon untuk mendapatkan kebenaran bagi mendepositkan ke dalam Mahkamah jaminan yang dipersyaratkan itu. Pada 25 Julai 1995, Hakim yang bijaksana telah memberikan kebenaran dan akibatnya telah menolak bantahan awal Pemungut. Ianya merupakan keputusan Hakim yang bijaksana bahawa Kaedah-kaedah 1954 tidak terpakai kerana tajuk-tajuk Kaedah-kaedah tersebut dan k. 6 di dalamnya merujuk kepada "Mahkamah Agung" dan kesemua prosiding dalam Mahkamah Agung. Dalam rayuan ini Pemungut antara lainnya berhujah bahawa kegagalan responden untuk memberikan jaminan sebelum pemfailan permohonan untuk membantah adalah memudaratkan kes responden mengambilkira kesan sebenar s.43(1) Enakmen.

Diputuskan:
Oleh Siti Norma Yaakob HMR

[1] Oleh kerana merit-merit kes masih belum dihujahkan atau didengar, perbuatan untuk mendapatkan perintah bagi jaminan tidak membatalkan permohonan tersebut, dan tidak juga menghalang responden daripada meneruskan selanjutnya dengan permohonan beliau. Ianya mungkin akan menjadi sebaliknya jika permohonan itu telah didengar dan diputuskan.

[2] Seksyen 43(1) Enakmen menetapkan bahawa suatu rayuan terhadap taksiran Pemungut boleh dicabar "in the manner and on the conditions directed by rules of the Court". Satu-satunya kaedah Mahkamah yang diketahui berhubung dengan duti harta pusaka adalah Kaedah-kaedah 1954 yang telah dibuat oleh Jawatankuasa Mahkamah Agung dalam menjalankan kuasa-kuasanya di bawah s. 4 Ordinan Jawatankuasa Kaedah-kaedah 1948. Apa yang berlaku adalah bahawa Jawatankuasa Kaedah-kaedah tersebut dalam kebijaksanaannya telah memberikan keutamaan kepada Kaedah-kaedah 1954 tersebut dengan merujuk kepadanya sebagai Kaedah-kaedah Mahkamah Agung (Duti Harta Pusaka) 1954 sejajar dengan tatanama Mahkamah-mahkamah yang wujud ketika itu dalam tahun 1954.

[3] Penggunaan perkataan "Mahkamah Agung" dalam Kaedah-kaedah 1954 tidak seharusnya menyempitkan pemakaian Kaedah-kaedah 1954 tersebut kepada perkara-perkara yang dikemukakan di hadapan Mahkamah Agung sahaja. Sebaliknya, Kaedah 1954 itu menurut perkataan-perkataan peruntukan kedua kepada s. 34(1) Enakmen mesti dianggap sebagai berkuatkuasa dengan pengubahan-pengubahan sebagaimana yang mungkin perlu bagi tujuan menentukan prosedur yang wujud berhubung dengan mana-mana peruntukan Enakmen tersebut. Bagi tujuan ini, Kaedah-kaedah 1954 adalah terpakai kepada fakta-fakta kes ini, dan Hakim yang bijaksana telah tersalah dalam keputusannya berhubung dengan perkara ini.

[4] Hakikat bahawa responden telah memulakan tindakan melalui usul pemula dan bukannya melalui satu petisyen tidak menafikan haknya untuk didengar berhubung dengan permohonannya. Hal ini haruslah sedemikian kerana apa yang menjadi isu adalah hanya formatnya dan bukannya substansnya. Sementara ianya benar, bahawa prosiding seharusnya bermula melalui satu petisyen, hakikat bahawa ianya tidak bermula sedemikian tidak menjejaskan Pemungut dalam apa cara pun. Ianya tidak mengubah hakikat bahawa substans permohonan adalah suatu bantahan kepada taksiran Pemungut, aduan yang sama yang mungkin akan berlaku jika prosiding tersebut telah dimulakan melalui satu petisyen. Dalam keadaan di sini, memulakan prosiding dalam format yang salah tidak memudaratkan kes responden.

[Rayuan ditolak.]

Legislation referred to:
Courts of Judicature Act 1964, s. 17
Estate Duty Enactment 1941, ss. 4, 43(1)
Finance Act 1992, s. 46
Rules Committee Ordinance 1948, ss. 3, 4
Supreme Court (Estate Duty) Rules 1954, rr. 2, 4, 5(b), 6, 9

Other source referred to:
Estate Duty Enactment, Chapter. 136, Revised Edn.

[Appeal from High Court Malaya, Kuala Lumpur; Originating Motion No: R1-25-117-1994]

For the appellant - Noradidah bte Ahmad, Senior Federal Counsel
For the respondent - Fiona M. Bodipalar; M/s. Sri Ram & Co.

JUDGMENT

Siti Norma Yaakob JCA:

The only issue raised in the proceedings before us concerns the procedure to be followed by an accountable person who is aggrieved by the decision of the Collector of Estate Duty ('the Collector') with respect to the Collector's assessment of the amount of estate duty payable by the accountable person under s. 4 of the Estate Duty Enactment 1941 ('the Enactment')

The accountable person in these proceedings is the administrator of the estate of one Veeriah s/o Savu, deceased, the respondent before us, who filed Originating Motion Rl-25-117-94 on 26 October 1994 ('the application') against the Collector, the appellant before us, objecting to the latter's notice of assessment dated 3 October 1994 of the amount of estate duty payable by the estate. Under the notice, the deceased's estate has been valued at RM2,975,525.14 of which estate duly due and payable has been assessed at RM616,962.52. The respondent's notice of motion seeks two prayers in the alternative, the principal one being that there is no estate duty payable on 17 parcels of land passing on the death of the deceased on 11 April 1983. The alternative prayer seeks to revise the assessment on the ground that the estate duty payable is excessive. The application is supported by the respondent's affidavit affirmed on 17 October 1994.

Together with his affidavit in reply to the application, the Collector had also filed a notice of preliminary objection dated 22 February 1995, wherein the Collector notified the respondent that at the hearing of the application, he, the Collector would raise the following preliminary objections:

(1) The procedure adopted by the respondent objecting to the assessment is wrong as it failed to comply with the provisions of s. 43(1) of the Enactment read together with rr. 6 and 9 of the Supreme Court (Estate Duty) Rules 1954 ('the 1954 Rules').

(2) Rule 2 of the 1954 Rules had not been followed.

(3) The application is premature as the precondition required by s. 43(1) of the Enactment had not been complied with.

Responding to the notice of preliminary objection, the respondent in an attempt to comply with s. 43(1) of the Enactment, filed a summon in chambers dated 13 March 1995 for leave to provide security as the precondition for the hearing of his application by the deposit into Court of four title deeds of the lands concerned which have a market value of RM668,000 Ahmad Fairuz J (as he then was) heard this summon in chambers and at the same hearing the preliminary objections raised in the notice were also argued by the Collector and on 25 July 1995, the learned Judge dismissed the Collector's preliminary objections and granted leave to the respondent to deposit four title deeds into Court as security before the hearing of the application against the Collector's assessment can be heard on its merits and that the hearing of the application can only be proceeded with after the security deposit had been made.

It is to appeal against this order that the parties are now before us.

The application to review the collector's assessment is made under s. 43(1) of the Enactment which reads as follows.

> 43. (i) Any accountable person aggrieved by the decision of the Collector with respect to the amount of estate duty payable ... and whether he is aggrieved on the ground of the value of any payments or the rate charged or otherwise, may, on payment of or giving security as hereinafter mentioned for the duty claimed by the Collector or such portion of it as is then payable of by him, apply to the Court within the time and in the manner and on the conditions directed by rules of Court and the amount of duty shall be determined by the said Court ... .
>
> Provided that the rule committee established pursuant to the s. 17 of the Courts of Judicature Act 1964 may by rule prescribe the cases in which in lieu of an application to the Court as hereinbefore provided the matter in dispute shall be brought before the Court by way of case stated by the Collector or by way of a suit brought by the person aggrieved or by such other form of proceedings as the said Rule Committee may prescribe and may make rules governing the practice and procedure to be followed in such cases:

Provided further that until any rules have been prescribed under this sub-section any procedure existing in relation to proceedings in respect of any provisions of the Estate Duty Enactment (Chapter 136 of the Revised Edition) shall with such modifications as the Court may consider necessary be deemed to be in force for the purpose of this Enactment.

(ii) ...

(iii) ...

(iv) The Court if satisfied that it would impose hardship to require the applicant, as a condition of an application, to pay the whole, or as the case may be, any part of the duty claimed by the Collector or of such portion of it as is then payable by him, may allow an application to be brought on payment of no duty or of such part only of the duty as to the Court seems reasonable, and on security to the satisfaction of the Court being given for the duty or so much of the duty as is not paid, but in such case the Court may order interest not exceeding six per cent per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

It is the Collector's case that before any application to review his assessment is made to the High Court, the respondent is obliged by s. 43(1) to fulfil the precondition that he, the respondent must provide security for the estate duty payable. In this instance the respondent had failed to do so but instead filed a subsequent application in the form of the summons in chambers for security to be provided by him. It is the Collector's further contention that this failure to obtain an order for security prior to the filing of the application is fatal to the respondent's case.

We do not consider that the subsequent conduct of obtaining the order for security has the effect of nullifying the application or bar the respondent from proceeding further with his application as the merits of the the application had not been argued or heard. It would have been otherwise had the application been heard and determined and in any event the learned trial Judge had taken the precaution of ensuring that the merits of the application will not be heard until after the security ordered to be made has been deposited by the respondent.

Another issue raised is the format to be used by the respondent when seeking to review the Collector's assessment in the High Court. The Collector's objection here is that the application should have been proceeded with by way of a petition under rr. 6 and 9 of the 1954 Rules and not by way of an originating motion as was done in this case.

For ease of reference we restate the relevant two rules as follows.

> Application to be by petition.
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> 6. Every application shall be made by way of petition addressed to the Judges of the Supreme Court intituled "In the matter of the Estate Duty Enactment 1941 and in the matter of the Estate of ... deceased ...
> Service
>
> 9. The rules relating to petitions generally in the High Court shall apply to such petitions, ...

When considering this objection, the learned Judge had concluded that the 1954 Rules are not applicable as the title of the Rules and r. 6 refer to "Supreme Court" and all proceedings in the Supreme Court.

We consider that the learned Judge has erred in deciding as he did for the following reasons.

Section 43(1) of the Enactment prescribes how an appeal against the Collector's assessment can be challenged "in the manner and on the conditions directed by rules of Court." The only known rules of Court relating to estate duty which is a specialised form of taxation on death is the 1954 Rules made by the Supreme Court Rule Committee in under s. 4 of the Rule the exercise of its powers under s. 4 of the Rule Committee Ordinance 1948. The Supreme Court Rule Committee established by s. 3 of the same Ordinance and the predecessor of the present Rules Committee established under s. 17 of the Courts of Judicature Act 1964, had in its wisdom gave prominence to the 1954 Rules by referring to them as the Supreme Court (Estate Duty) Rules 1954 in line with the nomenclature of Courts then existing in 1954. Usage of the word "Supreme Court" in the 1954 Rules should not narrow the application of the 1954 Rules to matters brought before the Supreme Court only. On the contrary we consider that the 1954 Rules in the words of the second proviso to s. 43(1) of the Enactment be deemed to be in force with such modifications as may be necessary for the purpose of prescribing the procedure existing in respect of any provision of the Enactment. To that end the 1954 Rules are applicable to the facts of this case.

Having ruled that the 1954 Rules are applicable and that under rr. 6 and 9 any review of the Collector's assessment before the High Court can only commenced by way of a petition, does the fact that the respondent had instead proceeded by way of an originating motion disentitle him to be heard on his application?

We say "no" as what is in issue is only the format and not the substance. Whilst we do appreciate that rightly proceedings should commence by way of a petition, the fact that it did not, does not prejudice the Collector in any way. It does not alter the fact that the substance of the application is an objection to the Collector's assessment, the very same complaint that would appear had proceedings commenced by way of a petition. Since the merits of the application have not yet been heard and since the preliminary objection is only as to form as opposed to substance, we do not consider that commencing these proceedings in the wrong format is fatal to the respondent's case. As for fears expressed by Senior Federal Counsel that this will create an unhealthy precedent we also consider those fears to be quite unfounded as by virtue of s. 46 of the Finance Act 1992, the Enactment has since been repealed and estate duty is no longer enforced in this country on the estate of any person dying on or after l November 1991. As such we reckon that the incidence of appeals filed against the Collector's assessments to be minimal if not nil.

Whilst objection was placed on the respondent for non-compliance of r. 6 of the 1954 Rules, the Collector himself cannot run away from the fact that he, too, had committed a procedural error in failing to comply with r. 4 read together with r. 2 of the 1954 Rules. We set out rr. 2 and 4 for ease of reference.

> Notice of intention to apply.
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> 2. Any person aggrieved with sub-s. (1) of s. 43 of the Estate Duty Enactment 1941 who desires to apply to the Supreme Court in any of the cases mentioned in the said sub-section shall within two months from the date of the receipt by him or his solicitor of the decision or claim of the Collector give the Collector notice in writing of his intention to apply to Court and shall set out in such notice the grounds of the proposed application.
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> Written statement of Collector.
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> 4. The Collector shall within two months from the delivery to him of the notice of intention to apply to Court send a written statement to the applicant or his solicitor aforesaid whether he has withdrawn the decision or claim against which application is to be made or has determined to maintain the same either in whole or in part, and if in part specifying such part.

In this case, the Collector's notice of assessment dated 3 October 1994 was received by the respondent on the same day. On 26 October 1994 the respondent's solicitors gave a notice to the Collector of the against the Collector's respondent's intention to appeal against the Collector's assessment for the reasons stated in the said notice. Clearly the respondent had complied with r. 4 of the 1954 Rules.

The Collector, however, has to date, not responded to the notice and under r.4, he is obliged to give a written statement by way of a reply to the respondent's notice.

However we consider that the Collector's failure to supply the written statement to the respondent cannot bar him from appearing to object to the application as r. 5(b) of the 1954 Rules allows the respondent to file the application in the absence of the written statement after the expiry of the two months stipulated by r. 4.

For the reasons that we have given, we had dismissed the Collector's appeal, affirmed the decision of the High Court but made no order as to costs in this appeal.

Reported by WA Sharif